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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/633,821	08/04/2003	David S. Benco	LUTZ 2 00233	7513

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EXAMINER	
CHERY, DADY	
ART UNIT	**PAPER NUMBER**
2616	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/633,821	BENCO ET AL.	
	Examiner	Art Unit	
	Dady Chery	2616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *04 August 2003*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1- 20* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-20* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *08/04/2003*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 4,5,6,7,14,15,16,17,19 and 20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

3. Claims 4,5,6,7,14,15,16,17,19 and 20 recite the limitation "about" in line 1. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5. The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.

4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

6. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

7. Claims 1- 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kahveci et al. (US Patent 6,973,037, hereinafter Kahveci) in the view of Ogasawara et al.

Regarding claims 1 and 8, Kahveci discloses *a method for reconfiguring network capacity in a communication network* (Fig. 3), *the method including the steps*:

a) *determining if a current demand for network capacity exceeds a first value* (ST4);

b) *if the current demand exceeds the first value, reconfiguring network capacity for the wireless network to a higher network capacity* (ST5);

c) *determining if the current demand is less than a second value* (ST7);

d) *if the current demand is less than the second value, reconfiguring network capacity for the network to the original purchased or lower network capacity* (ST8) (Col. 2, lines 34 – 39 and lines 53- 62).

Kahveci differs from the claimed invention by using and ISDN network which is a digital network instead of a wireless network.

However, Ogasawara teaches a wireless network (20) connected to an ISDN network (10) (Fig. 4).

Therefore, It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the ISDN network to a mobile network for providing a radio communication method and a radio system which allow data transmission in a wide band modulation signal and at a high speed without deterioration of the data quality (Col. 1, lines 60 – Col. 2, lines 4).

Regarding claims 2 and 9, Kahveci disclose the step b) (Fig. 4) further including: *accumulating usage data at the higher network capacity* (ST7); the system monitored the amount the additional bandwidth has been allocated (Col. 2, lines 58 –59).

and step d) *further including: communicating the usage data associated with the higher network capacity to a network equipment/software provider's billing system.* It is inherent to communicate the usage of the additional bandwidth to the provider's billing system because the system is monitored by the provider and every user has to pay for the service received.

Regarding claims 3 and 11, Kahveci discloses *the method as set forth in claim 2, further including: e) periodically repeating steps a) through d) during operation of the network* (Fig. 3). The arrows show that the steps are repeating periodically.

Kahveci differs from the claimed invention by using and ISDN network which is a digital network instead of a wireless network.

However, Ogasawara teaches a wireless network (20) connected to an ISDN network (10) (Fig. 4).

Therefore, It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the ISDN network to a mobile network for providing a radio communication method and a radio system which allow data transmission in a wide band modulation signal and at a high speed without deterioration of the data quality (Col. 1, lines 60 – Col. 2, lines 4).

Regarding claims 10, Kahveci disclose the step b) (Fig. 4) further including: *accumulating usage data at the lower network capacity* (ST7); the system monitored the amount bandwidth has been allocated during the second threshold value is measured (Col. 2, lines 59 –60). This is the same function as the instant application.

and step d) *further including: communicating the usage data associated with the higher network capacity to a network equipment/software provider's billing system.* It is inherent to communicate the usage of the additional bandwidth to the provider's billing system because the system is monitored by the provider and every user has to pay for the service received.

Regarding claims 4 and 14, Kahveci discloses the claimed invention except for the first value is about 0.90. It would have been obvious to one having ordinary skill in the art at the time the invention was made consider the first value at 0.90, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980). **SEE MPEP 2144.05 II.**

Regarding claim 5, Kahveci discloses the claimed invention except for the second value is about 0.70. It would have been obvious to one having ordinary skill in the art at the time the invention was made consider the second value at 0.70, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980). **SEE MPEP 2144.05 II.**

Regarding claims 6 , 17 and 20, Kahveci discloses the claimed invention except for the capacity is about 500K busy hour call events. It would have been obvious to one having ordinary skill in the art at the time the invention was made consider the capacity is about 500K busy hour call events, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. In re Boesch, 617 F.2d 272, 205 USPQ 215 (CCPA 1980). **SEE MPEP 2144.05 II.**

Regarding claims 7, 15 and 19, Kahveci discloses the claimed invention except for the capacity is about 1000K busy hour call events. It would have been obvious to one having ordinary skill in the art at the time the invention was made consider the capacity is about 1000K busy hour call events, since it has been held that discovering

an optimum value of a result effective variable involves only routine skill in the art. In re Boesch, 617 F.2d 272, 205 USPQ 215 (CCPA 1980). **SEE MPEP 2144.05 II.**

Regarding claim 5, Kahveci discloses the claimed invention except for the second value is about 0.35. It would have been obvious to one having ordinary skill in the art at the time the invention was made consider the second value at 0.35, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980). **SEE MPEP 2144.05 II.**

Regarding claims 12 and 13, Kahveci discloses (Fig. 7) a method where the central office switch (18) determines that the number of minimum and maximum channels are available (Col. 8, lines 27 – 46). If this case the system increase or decrease the bandwidth (Col. 2, lines 35 – 39). This is the same function as determining if the service provider reaches the highest and the lowest capacity and continue from step a) to d) as described by the instant application.

Regarding claim 18, *a method for reconfiguring network capacity in a communication network* (Fig. 3), *the method including the steps*:

a) *determining if a current demand for network capacity exceeds a first value* (ST4);

b) *if the current demand exceeds the first value, reconfiguring network capacity for the wireless network to a higher network capacity* (ST5);

c) *determining if the current demand is less than a second value* (ST7);

d) *if the current demand is less than the second value, reconfiguring network capacity for the network to the original purchased or lower network capacity* (ST8) (Col. 2, lines 34 – 39 and lines 53- 62).

Kahveci disclose the step (Fig. 4) of *accumulating usage data at the lower network capacity* (ST7); the system monitored the amount bandwidth has been allocated during the second threshold value is measured (Col. 2, lines 59 –60). This is the same function as the instant application.

and step *further including: communicating the usage data associated with the higher network capacity to a network equipment/software provider's billing system.* It is inherent to communicate the usage of the additional bandwidth to the provider's billing system because the system is monitored by the provider and every user has to pay for the service received.

Kahveci discloses (Fig. 7) a method where the central office switch (18) determines that the number of minimum and maximum channels are available (Col. 8, lines 27 – 46). If this case the system increase or decrease the bandwidth (Col. 2, lines 35 – 39). This is the same function as determining if the service provider reaches the highest and the lowest capacity and continue from step a) to d) as described by the instant application.

Kahveci differs from the claimed invention by using and ISDN network which is a digital network instead of a wireless network.

However, Ogasawara teaches a wireless network (20) connected to an ISDN network (10) (Fig. 4).

Therefore, It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the ISDN network to a mobile network for providing a radio communication method and a radio system which allow data transmission in a wide band modulation signal and at a high speed without deterioration of the data quality (Col. 1, lines 60 – Col. 2, lines 4).

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Spell et al. (US Patent 6,208,640) described a predictive bandwidth allocation method and apparatus.

Mikami et al. (US Patent 7,071,968) discloses a bandwidth control service management apparatus.

Paleologo (US Application 2004/0139037) discloses a method for design of pricing schedules in utility contracts.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dady Chery whose telephone number is 571-270-1207. The examiner can normally be reached on Monday - Thursday 8 am - 4 pm ESt.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ricky Q. Ngo can be reached on 571-272-3139. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MERY Doody. 05/03/07

RICKY Q. NGO
SUPERVISORY PATENT EXAMINER